

**APPENDIX A****Civil Service Law Provisions Involved**

**SUBDIVISION 1 of SECTION 105, NEW YORK CIVIL SERVICE LAW, is captioned, "Ineligibility of persons advocating overthrow of government by force or unlawful means," and provides:**

**"No person shall be appointed to any office or position in the service of the state or of any civil division thereof, nor shall any person employed in any such office or position be continued in such employment, nor shall any person be employed in the public service as superintendent, principal or teacher in a public school or academy or in a state college or any other state educational institution who:**

**(a) by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means; or**

**(b) prints, publishes, edits, issues or sells any book, paper, document or written or printed matter in any form containing or advocating, advising or teaching the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown by force, violence or any unlawful means, and who advocates, advises, teaches, or embraces the duty, necessity or propriety of adopting the doctrine contained therein; or**

**(c) organizes or helps to organize or becomes a member of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence, or by any unlawful means.**

**For the purposes of this section, membership in the communist party of the United States of America or the communist party of the state of New York shall**

constitute *prima facie* evidence of disqualification for appointment to or retention in any office or position in the service of the state or of any city or civil division thereof."

SUBDIVISION 2 of SECTION 105, NEW YORK CIVIL SERVICE LAW, is captioned, "A person dismissed or declared ineligible pursuant to this section may within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause signed by a justice of the supreme court, why a hearing on such charges should not be had," and provides:

"Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of any order of dismissal or ineligibility based on the provisions of this section; provided, however, that during such stay a person so dismissed shall be suspended without pay, and if the final determination shall be in his favor he shall be restored to his position with pay for the period of such suspension less the amount of compensation which he may have earned in any other employment or occupation and any unemployment insurance benefits he may have received during such period. The hearing shall consist of the taking of testimony in open court with opportunity for cross examination. The burden of sustaining the validity of the order of dismissal or ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or order of ineligibility."

SUBDIVISION 3 of SECTION 105, NEW YORK CIVIL SERVICE LAW, is captioned, "Removal for treasonable or seditious acts or utterances," and provides:

"A person in the civil service of the state or of any civil division thereof shall be removable therefrom for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position. For the purpose of this subdivision, a treasonable word or act shall mean 'treason', as defined in the penal law; a seditious word or act shall mean 'criminal anarchy' as defined in the penal law."

**APPENDIX B****Education Law Provisions Involved**

**SECTION 3021, NEW YORK EDUCATION LAW**, is captioned "Removal of superintendents, teachers and employees for treasonable or seditious acts or utterances," and provides:

"A person employed as superintendent of schools, teacher or employee in the public schools, in any city or school district of the state, shall be removed from such position for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position."

**SECTION 3022, NEW YORK EDUCATION LAW**, is captioned, "Elimination of subversive persons from the public school system," and provides:

"1. The board of regents shall adopt, promulgate, and enforce rules and regulations for the disqualification or removal of superintendents of schools, teachers or employees in the public schools in any city or school district of the state and the faculty members and all other personnel and employees of any college or other institution of higher education owned and operated by the state or any subdivision thereof who violate the provisions of section three thousand twenty-one of this article or who are ineligible for appointment to or retention in any office or position in such public schools or such institutions of higher education on any of the grounds set forth in section twelve-a of the civil service law and shall provide therein appropriate methods and procedure for the enforcement of such sections of this article and the civil service law.

2. The board of regents shall, after inquiry, and after such notice and hearing as may be appropriate, make a listing of organizations which it finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the government of the United States or of any state or of any political subdivision thereof shall be overthrown or overturned by force,

violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section twelve-a of the civil service law. Such listings may be amended and revised from time to time. The board, in making such inquiry, may utilize any similar listings or designations promulgated by any federal agency or authority authorized by federal law, regulation or executive order, and for the purposes of such inquiry, the board may request and receive from such federal agencies or authorities any supporting material or evidence that may be made available to it. The board of regents shall provide in the rules and regulations required by subdivision one hereof that membership in any such organization included in such listing made by it shall constitute *prima facie* evidence of disqualification for appointment to or retention in any office or position in the public schools of the state.

3. The board of regents shall annually, on or before the fifteenth day of February, by separate report, render to the legislature, a full statement of measures taken by it for the enforcement of such provisions of law and to require compliance therewith. Such reports shall contain a description of surveys made by the board of regents, from time to time, as may be appropriate, to ascertain the extent to which such provisions of law have been enforced in the city and school districts of the state."

**APPENDIX C****Rules of the Board of Regents**

**ARTICLE XVIII, SECTION 244, RULES OF THE BOARD OF REGENTS** (Adopted July 15, 1949), is captioned, "Subversive Activities", and provides:

"1. The school authorities of each school district shall take all necessary action to put into effect the following procedures for disqualification or removal of superintendents, teachers or other employes who violate the provisions of section 3021 of the Education Law or section 12-a\* of the Civil Service Law.

a. Prior to the appointment of any superintendent, teacher or employe, the nominating official, in addition to making due inquiry as to the candidate's academic record, professional training, experience and personal qualities, shall inquire of prior employers, and such other persons as may be in a position to furnish pertinent information, as to whether the candidate is known to have violated the aforesaid statutory provisions, including the provisions with respect to membership in organizations listed by the Board of Regents as subversive in accordance with paragraph 2 hereof. No person who is found to have violated the said statutory provisions shall be eligible for employment.

b. The school authorities shall require one or more of the officials in their employ, whom they shall designate for such purpose, to submit to them in writing not later than October 31, 1949, and not later than September 30th of each school year thereafter, a report on each teacher or other employe. Such report shall either (1) state that there is no evidence indicating that such teacher or other employe has violated the statutory provisions herein referred to, including the provisions with respect to membership in organizations listed by the Regents as subversive in accordance with paragraph 2 hereof; or (2) where there is evidence indicating a violation of said statutory pro-

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\* Now section 105.



visions, including membership in such a subversive organization, recommend that action be taken to dismiss such teacher or other employe, on the ground of a specified violation or violations of the law.

c. The school authorities shall themselves prepare such reports on the superintendent of schools and such other officials as may be directly responsible to them, including the officials designated by them in accordance with subdivision b of this paragraph.

d. The school authorities shall proceed as promptly as possible, and in any event within 90 days after the submission of the recommendations required in subdivision b of this paragraph, either to prefer formal charges against superintendents, teachers or other employes for whom the evidence justifies such action, or to reject the recommendations for such action.

e. Following the determination required in subdivision d of this paragraph, the school authorities shall immediately institute proceedings for the dismissal of superintendents, teachers or other employes in those cases in which in their judgment the evidence indicates violation of the statutory provisions herein referred to. In proceedings against persons serving on probation or those having tenure, the appropriate statutory procedure for dismissal shall be followed. In proceedings against persons serving under contract and not under the provisions of a tenure law, the school authorities shall conduct such hearings on charges as they deem the exigencies warrant, before taking final action on dismissal. In all cases all rights to a fair trial, representation by counsel and appeal or court review as provided by statute or the Constitution shall be scrupulously observed.

2. Pursuant to chapter 360 of the Laws of 1949, the Board of Regents will issue a list, which may be amended and revised from time to time, of organizations which the Board finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the Government of the United States, or of any state or of any political subdivision thereof, shall be overthrown or overturned by force, violence or any

unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section 12-a\* of the Civil Service Law. Evidence of membership in any organization so listed on or after the tenth day subsequent to the date of official promulgation of such list shall constitute *prima facie* evidence of disqualification for appointment to or retention of any office or position in the school system. Evidence of membership in such an organization prior to said day shall be presumptive evidence that membership has continued, in the absence of a showing that such membership has been terminated in good faith.

3. On or before the first day of December of each year, the school authorities of each school district shall render to the Commissioner of Education a full report, officially adopted by the school authorities and signed by the presiding officer, of the measures taken by them for the enforcement of these regulations during the calendar year ending on the 31st day of October preceding. Such report shall include a statement as to (a) the total number of superintendents, teachers and other employes in the employ of the school district; (b) the number of superintendents, teachers and other employes as to whom the school authorities and/or the officials designated by them have reported that there is no evidence indicating that such employes have violated the statutory provisions herein referred to, including the provisions with respect to membership in organizations listed by the Regents as subversive; and (c) the number of superintendents, teachers and other employes in whose cases the school authorities and/or the officials designated by them have recommended that action be taken to dismiss the employes in question, on the grounds of specified violations of the law or evidence of membership in a subversive organization. Such report shall also include, for the group listed under (c) above, a statement of (d) the number of cases in which charges have been or are to be preferred and the status or final disposition of each of these cases; (e) the num-

\* Now section 105.

ber of cases in which the school authorities have concluded that the evidence reported by the designated officials does not warrant the preferring of charges; and (f) the number of cases in which the school authorities have not determined, as of October 31st of the school year in question, on the action to be taken.

4. Immediately upon the finding by school authorities that any person is disqualified for appointment or retention in employment under these regulations, said school authorities shall report to the Commissioner of Education the name of such person and the evidence supporting his disqualification, including a transcript of the official records of hearings on charges, if any, which have been conducted.



## APPENDIX D

### Penal Law Sections Involved

SECTIONS 160 and 161 of the NEW YORK PENAL LAW provide:

“SECTION 160. Criminal anarchy defined.

Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.”

“SECTION 161. Advocacy of criminal anarchy.

Any person who:

1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government or by any unlawful means; or,

2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or

3. Openly, wilfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or for any civilized nation having an organized government, because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

4. Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such a doctrine.

Is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.”

**APPENDIX E****Feinberg Certificates**

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**STATE UNIVERSITY OF NEW YORK AT BUFFALO****CERTIFICATE**

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof cannot be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

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This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as well as the laws cited therein are part of the terms of my employment. I further certify that I am not now a member of the Communist Party and that if I have ever been a member of the Communist Party I have communicated that fact to the President of the State University of New York.

Date

Signature

"B"

## CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof can not be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

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This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as presented to me, as well as the laws cited therein, except for the Education Commissioner's memorandum, are part of the terms of my employment. I further certify that I am not now a member of the Communist Party of the State of New York or of the United States, and that if I have ever been a member of the Communist Party of the State of New York or of the United States, I have communicated that fact to the President of the State University of New York.

..... Date ..... Signature

## APPENDIX F

### Resolutions of the Board of Trustees of the State University of New York

*Resolved* that Resolution 65-100 adopted May 13, 1965, be and the same hereby is, amended to read as follows:

*Resolved* that Resolution No. 56-98 adopted on October 11, 1956, incorporated into the Policies of the Board of Trustees as Section 3 of Title B of Article XI thereof, and the Procedure on New Academic Appointments therein referred to, be, and the same hereby are, *Rescinded*, and

*Further Resolved* that Title B of Article XI of the Policies of the Board of Trustees be amended by adding a new Section 3 thereto to read as follows:

#### § 3. Procedure for appointments.

Before any initial appointment shall hereafter be made to any position certified to be in the professional service of the University pursuant to Section 35 of the Civil Service Law the officer authorized to make such appointment or to make the initial recommendation therefor shall send or give to the prospective appointee a statement prepared by the President concisely explaining the disqualification imposed by Section 105 of the Civil Service Law and by Section 3022 of the Education Law and the Rules of the Board of Regents thereunder, including the presumption of such disqualification by reason of membership in organizations listed by the Board of Regents. Such officer, in addition to due inquiry as to the candidate's record, professional training, experience and personal qualities, shall make or cause to be made such further inquiry as may be needed to satisfy him as to whether or not such candidate is disqualified under the provisions of such statute and rules. Should any question arise in the course of such inquiry such candidate may request or such officer may require a personal interview. Refusal of a candidate to answer any question relevant to such inquiry by such officer shall be suffi-

cient ground to refuse to make or recommend appointment. An appointment or recommendation for appointment shall constitute a certification by the appointing or recommending officer that due inquiry has been made and that he finds no reason to believe that the candidate is disqualified for the appointment.

*Further Resolved* that this resolution shall become effective July 1, 1965, provided, however, that this resolution shall become effective immediately with respect to appointments made or recommended prior to July 1, 1965 to take effect on that date.

*Resolved* that any person presently employed or heretofore employed by the University who has failed to sign the certificate required by the Procedure on New Academic Appointments adopted on October 11, 1956, shall not be deemed disqualified or ineligible solely by reason of such failure, for appointment or reappointment in the professional service of the University in the manner provided in new Section 3 of Title B of Article XI of the Policies of the Board of Trustees as adopted by resolution this day; and

*Further Resolved* that any person presently employed by the University shall not be deemed ineligible or disqualified for continuance in his employment during the prescribed term thereof, nor be subject to charges of misconduct, solely by reason of such failure, provided he is found qualified for such continuance by the Chief Administrative officer of the institution at which he is employed in accordance with the procedures prescribed in said new Section 3 of Title B of Article XI of the Policies of the Board of Trustees.